IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2121 OF 2006
IN
SUIT No. 49 of 1988

Ramesh S. Modi & Anr. .. Plaintiffs
versus
M/s.Rajesh Art Printers P.Ltd & Anr. Defendants

...

Mr.Kantilal Kanojia i/b P.N. Patwardhan for the plaintiff.

Mr.Darshan Mehta i/b Dhru Liladhar & Co. for defendant nos.1 and 2 in support.

**CORAM : D.G. KARNIK, J**

**DATED : 7th July 2006.**

**P.C.:**

1. Heard learned counsel for the plaintiffs and defendant.

2. This motion is taken out by the defendant for condonation of a delay in tendering the written statement and for taking a written statement on record. The suit was filed by the plaintiffs on 6th July 1988 and the writ of summons was served soon thereafter. As the defendant did not file written statement, directions were issued on 5th April 1991 to the

defendant for filing the written statement within 8 weeks. Even thereafter, the written statement was not filed but by taking out the motion today after nearly 15 years, the defendant seeks permission to file written statement.

3. In the affidavit in support of the motion, the long delay is not explained satisfactorily. Though longish affidavit of 10 paragraphs running into 3 1/2 typed written pages is filed, no facts are mentioned which explain satisfacotirly the delay. Only two reasons have been mentioned. The first is that the defendants have a good case on merits. In my view, that is not a ground for condonation of delay at all. Secondly, it is contended that the defendants changed their advocate. The advocate was changed in December 2005 which means that from the year 1991 to 2005, the defendants had engaged the same advocate and there is no reason why they did not give instructions to the first advocate for drafting and filing the written statement.

4. In the circumstances, there is no merit in the motion which is hereby dismissed.

**(D.G. KARNIK, J)**